

REMARKS

This communication responds to the Office Action mailed June 1, 2009. By the Amendment above, new claims 59-60 have been added, claims 1, 2, 5, 8, 10, 12, 13, 16, 19, 21-24, 27, 30, 32-35, 37-38, 41, 44, 46-47, 49-51, 57, and 58 have been amended, antecedent basis for which is found throughout the specification and drawings, for instance, in the originally filed claims, paragraphs 45-49, and Figures 7-10 of the application as published, and claims 6, 7, 9, 17, 18, 20, 28, 29, 31, 42, 43, 45, and 52-56 have been canceled.

Applicants have made these amendments solely to advance prosecution of the present application and to obtain allowance at the earliest possible date. Accordingly, no admission may be inferred from these amendments. Applicants expressly reserve the right to pursue the originally filed claims in the future. Additionally, Applicants submit that the amendments made herein introduce no new matter. The following remarks are respectfully submitted.

Double Patenting

The Examiner has rejected claims 1-8 and 12-19 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 and 19-26 of U.S. Patent No. 7,128,748 (Mooradian et al.) as not patentably distinct because they claim a combination medical device and a kit for use with a circular stapling procedure, where the device and kit include, inter alia, a circular stapler instrument or stapler and portions of buttress material adapted to be positioned upon components of the stapler instrument or stapler.

By the Amendment above, Applicant has amended each of the independent claims to include features similar to previously pending claim 9. Since claim 9 was not rejected on double patenting grounds, Applicant's amendment has obviated the rejection. Accordingly, Applicant requests the rejection be withdrawn.

Claim Rejections Under 35 USC § 102(e)

The Examiner has rejected claims 1-3, 5, 6, 8-10, 12-14, 16-17, 19-21, 23-25, 27-28, 30-32, 35, 38-39, 41-42, 44-46 and 48-58 as being anticipated by U.S. Patent No. 6,656,193 (Grant et al.).

Independent claims 1, 12, and 49 each include a buttress for a circular stapler instrument. The buttress includes a first region and a second region concentric to the first region. The first region provides a buttress between two sections of joined tissue upon activation of a circular stapler, while the second region is removed upon activation of a knife provided by the circular stapler. In particular, the first region and the second region of the buttress are formed of dissimilar materials. By being formed of dissimilar materials, the first region can include materials, such as animal tissue, that are useful for buttressing a seam, while the second region can include materials, such as a polymer, that are better suited to help retain the buttress on the circular stapler. Accordingly, the presently claimed buttress is advantageous for easily positioning and retaining the buttress on a circular stapler to make it easy to deliver to a tissue site and for buttressing the seam between tissue sections to be joined.

Grant discusses a device for attachment of buttress material to a surgical fastening device. Grant discusses both linear staplers and circular staplers. With regard to the circular staplers, Grant discloses attaching the buttress material to the stapler with an adhesive bead and providing tabs that can be secured into hooks on the stapler. *See, e.g., Grant Figures 5 and 11 and descriptive text thereof.*

Grant does not disclose each element of the independent claims. For example, it does not describe a second region concentric with the first region that is cut and removed upon activation of a stapler knife. At most, to position the buttress ring onto the stapler Grant describes a buttress ring 107 with tabs 108 extending outward beyond the stapler face. However, the tabs are not cut and removed upon activation of a stapler knife, and require that the stapler itself be either modified or adapted to provide hooks that interact with the tabs.

Further, even if the tabs could somehow be considered the claimed second region, they still are not formed of materials that are dissimilar from the buttress ring 107. The Examiner cites a listing of synthetic materials from column 8 of Grant as showing different materials. However, these materials describe an adhesive that can be applied to the buttress material, and are not materials that form any part of the buttress itself. In fact, Grant does not disclose a buttress device formed of more than one material. In particular, Grant does not disclose that the tabs 108 are formed of any material other than that of the buttress ring 107. *See Grant, column 11, line 22-column 12, line 5.* Accordingly, Grant does not anticipate independent claims 1, 12,

or 49 and the rejections of those claims, and the claims depending therefrom, should be withdrawn.

Claim Rejections Under 35 USC § 103(a)

The Examiner has rejected claims 4, 15, 26, 37 and 40 as being unpatentable over U.S. Patent No. 6,656,193 (Grant et al.) in view of U.S. Patent No. 5,503,638 (Cooper et al.) and is respectfully traversed.

Cooper was cited against certain dependent claims to allegedly show certain animal tissue processing steps. However, Cooper does not add anything to the Grant reference in regard to the distinctions discussed above relating to independent claims 1, 12, or 49. Accordingly, all the elements of the rejected claims have not been shown by the cited references, either alone or in combination, and the obviousness rejection based on Grant and Cooper should be withdrawn.

Further, the Examiner has rejected claims 7, 11, 18, 22, 29, 33, 43, 47 and 58 as being unpatentable over U.S. Patent No. 6,656,193 (Grant et al.)

As discussed above, Grant does not teach or suggest each of the elements of independent claims 1, 12, or 49. Accordingly, all the elements of the rejected claims have not been shown by Grant, and the obviousness rejection should be withdrawn.

The Examiner has also rejected claims 35 and 36 as being unpatentable over U.S. Patent No. 6,656,193 (Grant et al.) in view of U.S. Patent No. 5,122,156 (Granger et al.) and is respectfully traversed.

Granger was cited against dependent claims 35 and 36 to allegedly show retaining rings. However, Granger does not add anything to the Grant reference in regard to the distinctions discussed above relating to independent claims 1, 12, or 49. Accordingly, all the elements of the rejected claims have not been shown by the cited references, either alone or in combination, and the obviousness rejection based on Grant and Granger should be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested. The Commissioner is hereby authorized to charge any additional fees required to Deposit Account No. 061910.

Respectfully submitted,

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